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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,750	09/17/2003	Betty H. Smith	18084.01	2624
37833	7590	06/01/2005	EXAMINER	
LITMAN LAW OFFICES, LTD PO BOX 15035 CRYSTAL CITY STATION ARLINGTON, VA 22215			HOEY, ALISSA L	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/663,750

**Applicant(s)**

SMITH, BETTY H.

**Examiner**

Alissa L. Hoey

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 13,16 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12,14 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 13, 16 and 17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected fly flap, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 05/09/05.

### ***Specification***

2. The disclosure is objected to because of the following informalities: identifies 20 on page 10 of the specification refers to both the waistband and the garment.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5, 7-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlson (US 3,974,836) in view of Morera et al. (US 4,602,390).

In regard to claim 1, Carlson teaches a garment (8) that is capable of being worn by both a man or a women as active wear having a modified fly-flap. A torso section defining a waist opening and the torso section having a front and a rear (figures 1 and 2). A pair of legs extending from the torso section and defining leg openings (figures 1 and 2). A crotch opening (50) being defined in the torso section between the legs. A fly-

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flap (50) having a lower end attached (54) to the rear of the torso section and an upper end releasably attached (62, 64) to the front of the torso section. The fly-flap covering the crotch opening when attached to the front of the torso section the fly-flap having a front surface and a rear surface (Figures 2, 4 and 5-7). A releasable fastener attached to the rear surface of the fly-flap and the front surface of the torso section (64).

However, Carlson fails to teach at least one pocket attached to the front surface of the fly-flap.

Morera et al. teaches a pocket that is capable of being attached to any garment at any location which includes the front surface of the fly-flap (column 1, lines 8-26).

In regard to claim 2, Carlson teaches the releasable fastener comprises mating sections of hook and loop fastening material attached to the fly-flap and the torso section respectively (column 3, lines 26-38).

In regard to claim 3, Morera et al. teaches at least one pocket consisting of a single pocket having an opening extending towards the waist of the torso section (column 2, lines 17-19).

In regard to claim 4, Morera et al. teaches at least one pocket consisting of a single pocket having an opening extending laterally towards one of the user's legs (column 2, lines 20-22).

In regard to claim 5, Morera et al. teaches wherein the at least one pocket comprises a first pocket having an opening extending toward the waist of the torso section and is further capable of incorporating a second pocket having an opening

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extending laterally towards one of the legs on the fly-flap portion (column 2, lines 17-22).

In regard to claim 7, Morera et al. teaches at least one pocket having an opening defined therein and a releasable fastener disposed about the opening for closing the pocket (figures 1, 4, 5, identifiers 11a, 11c).

In regard to claim 8, Morera et al. teaches at least one pocket having an opening defined therein and a zipper fastener disposed about the opening for closing the pocket (figures 1, 4, 5, identifiers 11a, 11c).

In regard to claim 9, Carlson teaches an elastic waistband (48) disposed about the waist of the torso section.

In regard to claim 10, Carlson teaches the torso section and the legs being made from spandex (column 4, lines 6-10).

In regard to claim 12, Carlson teaches the lower end of the fly-flap is sewn to the rear of the torso section (54).

It would have been obvious to have provided the garment with fly-flap of Carlson with the pocket of Morera et al. capable of being incorporated into any garment, since the fly-flap garment of Carlson provided with pocket(s) on the fly-flap would provide a place to safely store items when not needed by the wearer.

5. Claims 1 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schustack (US 3,279,469) in view of Morera et al.

In regard to claim 1, Schustack teaches a garment that is capable of being worn by both a man or a women as active wear having a modified fly-flap. A torso section

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defining a waist opening and the torso section having a front and a rear (figures 1 and 2). A pair of legs extending (22) from the torso section and defining leg openings. A crotch opening (40) being defined in the torso section between the legs. A fly-flap (46) having a lower end attached to the rear of the torso section and an upper end releasably attached to the front of the torso section (figure 7, identifier 26). The fly-flap covering the crotch opening when attached to the front of the torso section the fly-flap having a front surface and a rear surface (figures 5 and 7). A releasable fastener attached to the rear surface of the fly-flap (54') and the front surface of the torso section (56).

However, Schustack fails to teach at least one pocket attached to the front surface of the fly-flap.

Morera et al. teaches a pocket that is capable of being attached to any garment at any location which includes the front surface of the fly-flap (column 1, lines 8-26).

In regard to claim 11, Schustack teaches a liner (60) disposed on the rear surface of the fly-flap (figures 7).

It would have been obvious to have provided the garment with fly-flap of Schustack with the pocket of Morera et al. capable of being incorporated into any garment, since the fly-flap garment of Schustack provided with pocket(s) on the fly-flap would provide a place to safely store items when not needed by the wearer.

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6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carlson and Morera et al. as applied to claim 1 above, and further in view of Kowatsch (US 2,544,840).

Carlson and Morera fail to teach the pocket being made from waterproof material.

In regard to claim 6, Kowatsch teaches a waterproof pocket incorporated into a garment (column 1, lines 7-18).

It would have been obvious to have provided the fly-flap garment with pocket of Carlson and Morera et al. with the waterproof pocket of Kowatsch since the fly-flap garment and pocket of Carlson and Morera et al. provided with a waterproof pocket would provide a garment with fly-flap pocket that would protect its contents from perspiration or water keeping them dry.

7. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlson and Morera et al. as applied to claim 1 above, and further in view of Lonon (US 4,835,795).

Carlson and Morera et al. fail to teach a second releasable fastener attached to the rear of the torso section and to the front surface of the fly-flap. The fly-flap is drawn between the legs and temporarily attached to the rear of the torso section in order to expose the crotch opening for eliminating bodily waste. Further, Carlson and Morera fail to teach the second releasable fastener comprises mating patches of hook and loop fastening material.

In regard to claim 14, Lonon teaches a second releasable fastener attached to the rear of the torso section (7) and to the front surface of the fly-flap (5). The fly-flap is drawn between the legs and temporarily attached to the rear of the torso section in order to expose the crotch opening for eliminating bodily waste (column 1, lines 19-21).

In regard to claim 15, Lonon teaches the second releasable fastener comprising mating patches of hook and loop fastening material (column 1, lines 32-45).

It would have been obvious to have provided the fly-flap garment with pocket of Carlson and Morera with the back fastener of Lonon, since the fly-flap garment of Carlson and Morera provided with a back fastener would allow the flap to be retained in an open position when the user is using the facilities to avoid getting the flap soiled.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Newman, O'Shea, Noreen, Eyster, Atack, Boykins, Sharrock, Won, Gibbens, Rozenblat, Lundy, Pappas, Huston, Busker, Khemka and Frazier are all cited to show closely related garment articles.

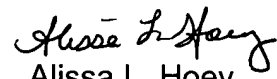
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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